TESTIMONY OF RICHARD ANDERSON
CHIEF EXECUTIVE OFFICER, DELTA AIR LINES, INC.
BEFORE
THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON AVIATION

HEARING ON AVIATION AND AIRPORT HOLIDAY TRAVEL PREPARATIONS
NOVEMBER 15, 2007

Chairman Costello, Congressman Petri and members of the Subcommittee, it is a pleasure to appear before you today to present Delta's plans for addressing potential customer and operational challenges over the Thanksgiving and December holiday season. We certainly understand and appreciate your concern for our customers and the traveling public in general during this season. Likewise, we are grateful for the opportunity to share our plans to deliver a hassle free and enjoyable holiday travel experience to our customers.

My testimony also provides an update on Delta's participation in the ongoing discussions with DOT and FAA to address the problems of congestion and delays in the New York region. These issues are part and parcel to the unacceptable travel experience our customers endured this past summer. We are committed to working with you and other stakeholders to see that they are corrected in the best interest of the traveling public and the industry alike. As you know, there are very significant policy issues involved in that process that will have a profound impact on all of Delta's stakeholders and our ability to become a major competitor in the global marketplace.

Holiday Travel Preparations

Delta and the rest of the industry operated at record load factors over the summer, and we anticipate that those records will continue through this busy holiday season. Overall capacity will actually be down slightly from the busy summer travel season, but the total number of

passengers we expect to carry Thanksgiving week will be similar to the number we transported during the same period in 2006. Last year, we carried approximately 1.8 million passengers during the Thanksgiving week, and our forecasts are for just over 1.8 million this year.

Our goal is to deliver the best possible service to our passengers at every opportunity. We know and care for our customers and ultimately believe that providing superior service and meeting our goals and their needs is paramount to our success. The high number of leisure travelers we expect to see during the holiday travel season makes those tasks more challenging, but it also makes them more essential.

Success requires extra planning, ample staffing, and robust communication - internally at Delta, with the federal agencies and airports that impact our operation, and most importantly, with our passengers. Each day we fly, we set operational and contingency plans and deploy staff – including flight crews, maintenance personnel and both above and below wing customer service agents -- based on our expected load factors. Our goal is always to execute a reliable operation with high completion factors in the face of record load factors. In light of the high passenger volumes and load factors we project for holiday travel periods, we also take a number of additional steps to ensure we are able to execute our operational plans, meet our customers' needs and provide the level of service they expect and deserve.

The specific steps we have implemented for the upcoming Thanksgiving and Christmas holiday travel periods fall into three broad categories: **Operational planning** – meaning we ensure equipment is in place and operational in order to meet expected passenger volumes as well as respond to irregular operations and potential cancellations. **Staffing** – meaning that we adjust duty rules, crew bidding, time off and incentive pay to ensure we have staff coverage appropriate for meeting passenger volume and responding to irregular operations. And finally,

Communication - specifically, we ensure that all our internal departments provide timely information on the operation to our leadership; we coordinate with airports and federal agencies to make them aware of our expected passenger counts so that they can adjust their staffing as well; we ensure that our employees understand their responsibilities during both normal and irregular operations; and most importantly, we ensure that our customers have accurate information about what to expect before and during their travel experience, including schedule changes and contingency planning in the face of irregular operations driven by winter weather and air traffic system delays.

Operational Planning

As part of our continuing commitment to deliver a hassle free travel experience to our customers, we have dedicated a significant amount of effort toward introducing technology where appropriate. Throughout our system, we have led the industry in the implementation and use of "kiosks" and on-line check-in to allow our customers to arrive at the airport prepared to move quickly to gates for their flights. For example, at Hartsfield-Jackson Atlanta International Airport, the world's busiest airport, we have completely redesigned our departure lobby to move our customers from the curb to security in the most efficient manner possible. This season our customers will be able to stop at a kiosk and utilize our "drop and go" baggage check-in, which automatically prints their bag tags and reduces queuing at the baggage conveyors. While this goes a long way toward reducing the hassle factor at check in, it has had the result of moving the queues to the security lanes and highlighting the critical need for the TSA to step up its responsibility to staff accordingly.

On the arrival side, Delta is well into the process of redesigning our Atlanta baggage

handling system to ensure our customers not only arrive on time but also receive their belongings in a timely manner. By the week of Thanksgiving, we will have replaced two of our nine Atlanta baggage claim carousels with new, larger and quieter units that are appropriate for the higher volume of bags we have seen since the TSA liquids ban was put into effect earlier this year. We expect to have all nine Atlanta baggage claim units replaced by early 2008. In addition to these structural improvements to our baggage claim system at our largest hub, Delta has made improvements to our baggage handling processes throughout the system, including the implementation of baggage scanning and standardized loading of aircraft as part of our internal commitment to raise our DOT mishandled bag ranking to the top half of the industry by next year.

Once at the gate, our customers will see Delta's continued focus on departing on time. In order to ensure our flights depart as scheduled, we implemented a policy to close the aircraft boarding door 3 minutes prior to departure to allow for all customers to be seated and final aircraft preparations completed in time to push the aircraft back on schedule. While this has the potential to impact customers arriving late to the gate for a variety of reasons, we must balance the needs of those already on board with those who may be a little late. As always, our supervisors are empowered to weigh the circumstances (number of late passengers, re-accommodation options, etc) and adjust that policy if necessary.

Within our own operation, our Operations Control Center (OCC), which manages the operation from 72 hours prior to flight departure through completion, maintains a continuing dialogue with every department at Delta to ensure they are prepared to meet our customers' needs. As I am testifying today, our OCC team is leading discussions with groups that will continually evaluate our flight crew staffing, equipment availability and positioning, parking

plans, Ground Support Equipment (GSE) availability, possible de-icing needs, cold weather plans, Delta Connection (regional partner) preparedness and ATC coordination. As the holiday seasons near, they will step up communications with each of our stations and continue that dialogue on a daily or even hourly basis throughout the season.

Finally, Delta is also committed to working with all federal and local agencies to take advantage of short term opportunities to increase airspace capacity during peak travel periods.

Staffing

To ensure that we meet our staffing targets and have ample staff in place to meet our customers' needs during the holiday travel period, Delta "Leaders" – supervisors and other experienced personnel - will NOT be permitted to take vacation days during critical holiday travel periods, and we will ensure that they are engaged and visible at each of our stations throughout the holiday, including Thanksgiving Day. Time-off grants have been significantly reduced for other front-line personnel, and overtime is being made available for unforeseen events. We will hold daily conference calls between our airport locations and our Operations Control Center (OCC) so that we can make staffing adjustments as necessary.

In terms of flight crew staffing for the upcoming holidays we are in a much better position this year due to the fact that we have offered recall to all furloughed pilots and flight attendants and bolstered our pilot ranks by hiring over 350 new pilots so far this year. We are also coordinating with pilots who request military leave around holidays to adapt their trips so they can meet their military requirements while still supporting the schedule, and we are making it easier for spouses of pilots and flight attendants on duty over the holidays to accompany their loved ones to their layover destinations. We have implemented holiday trip coverage procedures

to ensure we have greater numbers of flight crew staff on "reserve" – in other words, on-call staff able to fill-in at the last minute – with numbers significantly increased during the second half of December as well. Our In-Flight department (Flight Attendants) has also implemented rules to prevent employees from switching scheduled work-days during the holidays, is requiring doctors' notes for employees who call in sick, and is offering incentive pay for flying performed on December 24th and holiday pay for flying performed on December 25th and 31st, and January 1st.

Equipment

A critical part of ensuring we meet our customers' needs and recover quickly from irregular operations involves ensuring that our equipment is in top condition and is repaired and returned to service as quickly as possible. To that end, our maintenance division – Tech Ops -- will be staffed at full compliment throughout the Thanksgiving and December holiday periods. To date in 2007, our maintenance reliability has been at record levels, nearly a full point above last year. While this may not sound like much, if we had last year's maintenance reliability, Delta would have canceled over 700 additional flights, impacting over 70,000 passengers.

Also, with the high load factors expected during the holiday season, Delta is critically aware of the need to complete as many of our flights as possible. Similar to maintenance reliability, our year-to-date completion factor is well above industry average. To put that in perspective, if Delta had industry average completion factor, we would have canceled over 3,000 additional flights. However, circumstances sometimes arise that do force us to cancel flights, and high load factors then impact our ability to re-accommodate our customers on later flights to their destinations. In anticipation of that eventuality, we have scheduled numerous additional

sections across the system to provide a safety valve should that happen. Compared to the week prior to Thanksgiving:

Date	Extra Sections
Saturday 11/17	+15
Sunday 11/18	+3
Monday 11/19	+20
Tuesday 11/20	+24
Wednesday 11/21	+18
Thursday 11/22	+7

As I mentioned previously, however, we are not focusing solely on aircraft availability. We are constantly evaluating our Ground Support Equipment availability and preparedness to ensure that once the aircraft arrive at the gate, there are adequate tugs, baggage carts and jetways to allow for towing and unloading of our flights.

In addition, because the Northeast is more prone to winter weather events during the Thanksgiving period than our other major hubs, we have an irregular operation (IROP) readiness plan in place specifically to address winter weather issues such as aircraft de-icing and runway, taxi-way and tarmac snow removal, and we will conduct a walk-through exercise prior to Thanksgiving week to validate that plan or adjust it as necessary. We participated in a November 8th JFK airport deicing meeting to ensure appropriate coordination between all airport tenants in the event of a winter weather event. Further, we installed plows on our JFK pick-up trucks, have two pad commander trucks ready for deice operations with a third on order, have ensured our deice trucks are filled with de-icing agent and in the ready position (there are 12 currently filled), and ensured that our stations have adequate reserves as well. We will also hold

a holiday readiness meeting with all of our JFK vendors on Friday, November 16 as well as a pre-holiday discussion with the Port Authority of New York & New Jersey regarding IROP handling and its ability to help/support Delta if needed. Our JFK station management team is also engaged in regular discussions with teams from LaGuardia (LGA) and Newark (EWR) about how we best use our resources to support our passengers during an IROP.

Communication

The final element of making the holiday travel period a success is ensuring that there is robust information flow both within Delta, between Delta and the federal agencies and airport authorities we interact with, and most importantly, with our customers. In addition to extensive morning, afternoon, and evening operational planning sessions held daily to identify potential weather systems, aircraft routing issues, and the possible need to reduce or cancel flights to ensure the greatest number of passengers arrive at their final destinations, we also hold regular conference calls between Delta stations and our Operations Control Center during the holiday period to assess how the operation is running. These calls help identify any changes that may be necessary to staffing, equipment rotation, flight routing or other factors to ensure the operation runs efficiently and can recover quickly from any cancellations or delays driven by weather, ATC system slow-downs or other factors outside Delta's control.

Any time our scheduled flights are impacted by weather, ATC, or other factors leading to delays or cancellations, our automated customer notification system – Delta Messenger -- automatically provides up to date information to all customers (using preferences for those who have signed up and provided us with specific contact information) regarding delays, cancellations, or schedule changes for their specific flights. Our gate agents and flight crews

also make timely announcements regarding the status of delayed flights. For flights that are delayed or cancelled at the beginning of a planning day because of forecasted severe weather or other events, we also pro-actively re-book and reaccommodate impacted customers, and notify them of the status of their original flight(s) and how they have been re-accommodated.

We have also communicated accurate and current information about our load factors and the composition of our passenger traffic so that federal government agencies that impact our operations can adjust their staffing and schedules accordingly. Specifically, we are providing TSA with information about our passenger loads at each station and are working with TSA Federal Security Directors to assist in the development and implementation of their holiday staffing plans. Given our experience with the agency last year, TSA staffing was generally adequate to meet customer throughput needs, and we certainly hope for the same this year. Likewise, we are working with Customs and Border Protection to provide them with our expected international passenger loads so the agency's staffing resources are adequate to ensure our customers do not experience extended delays in immigration and customs inspections upon entry into the U.S.

It is vitally important that federal agencies that we depend on to perform our services match our robust staffing and planning activities to deliver a good operation and excellent customer service.

Customer Service Commitment

In addition to advance planning we undertake to meet the volume of passengers who will fly over the holidays, one of our primary commitments is to deliver excellent customer service in the face of extreme weather events or air traffic control system delays. Delta has implemented

very detailed and comprehensive plans throughout our system to prepare for and even avoid extended tarmac and airport delays, but we are also prepared to care for our customers appropriately if and when they do occur. At airports like JFK, where congestion has been a significant problem this year, our plans include close coordination with the Port Authority of New York/New Jersey (PANYNJ) to get inbound or outbound flights with extended ground delays to a gate. These plans are activated for all delays whether they involve extreme weather or other circumstances that lead to customer inconvenience.

Consistent with our Customer Service Commitment, originally adopted in 1999 and recently updated, and our internal Operations Control Center (OCC) procedures, Delta has enhanced its well-defined processes to ensure that extra provisions, including food, water and lavatory servicing are made available to flights with ground delays or holds exceeding two hours. In addition, our OCC is notified of any lengthy delay, and each such flight is closely monitored to promote timely communication with the flight crew and station to determine the best course of action for our customers, whether it be cancellation, a return to the terminal, or continuation to destination. For any delay reaching two hours, Company Senior Executives are notified of the situation to enlist their involvement in the decision-making process.

At JFK, we have hired over 900 front line personnel this year alone to ensure that we can better serve our customers' needs in that challenging environment. We also implemented a plan to meet the needs of Delta customers stranded in our two terminals for extended periods due to excessive delays or cancellations. These include the purchase of extra cots and the provisioning of water, snacks, soft-drinks and meal and hotel vouchers should they become necessary. Delta has also identified personnel to provide special care to unaccompanied minors and elderly or disabled passengers should they be caught up in an irregular operation.

Mr. Chairman, as you are aware, in September the Department of Transportation's Inspector General released the long-awaited report on "Actions Needed to Minimize the Impact of Long On-Board Delays." This report included a number of recommendations to: improve the customer experience in the face of extended delays; improve the availability of information for passengers regarding flight delays, airline responses to extreme weather and other extended on-board delays; and provide DOT oversight of air carriers and how well they meet their customer commitments.

At Delta we place a very high priority on ensuring our customers have the best experience possible on our flights, and as I have outlined above, we implement extensive plans to mitigate the impact of extreme weather events before they occur and then meet our customers' needs in the face of delays we cannot avoid. With that in mind, we felt it very important to endorse the recommendations of the DOT Inspector General – many of which we have already implemented as part of our Customer Commitment. We continue to modify our commitment to emphasize to the traveling public as well as you and your peers in Congress that we take these recommendations seriously.

To this end we have amended our Customer Commitment and, as appropriate, our Contract of Carriage to include several of the recommendations, including:

- Defining what constitutes an "extended period of time" for on-board delays – two hours for departing flights and one hour for arriving flights;
- Establishing set timeframes to elevate any flight experiencing lengthy taxi-in and taxi-out delays to senior operational leaders in order to seek expedited resolution – one hour for arriving flights and two hours for departing flights, depending on airport conditions,;

- Posting to delta.com Delta's Customer Service Commitment and Contract of Carriage;
- Identifying and resolving issues within Delta's control that lead to chronically delayed flights to ensure each flight operates consistently on schedule;
- Providing customers, upon request, with on-time performance information for any Delta or Delta Connection flight during the reservation process --via reservation agent or via a link to Delta's on-time information provided on delta.com;
- Reviewing incidents of lengthy on-board delays to identify trends and causes in order to implement solutions and mitigate future similar events; and
- Complying with policies governing long on-board delays.

Delta also is committed to taking the following steps to adopt additional recommendations of the Inspector General that we had not previously implemented. These include:

- Posting historical on-time information by flight on delta.com;
- Regularly auditing compliance with our Airline Customer Service Commitment;
- Voluntarily and proactively working with airports to establish and adapt processes for mitigating lengthy on-board delays;
- Participating in a national task force with DOT, FAA, airports and airline peers to coordinate and develop contingency plans for dealing with lengthy on-board delays, including sharing facilities and making gates available for use during emergencies; and
- Complying with the Bureau of Transportation Statistics' new reporting requirements to capture all events resulting in long on-board delays, such as flight diversions.

The IG's recommendations provide a good framework with which we can make that commitment, and we are pleased to take on these new obligations in areas we are able to control.

However, the most significant contributors to customer frustration and inconvenience – systemic delays and congestion, especially in the New York area – are very much outside of our control. While we will do everything within our power to help reduce delays and congestion where we are able, we believe that it is incumbent upon the DOT, the FAA and the Congress to put a fair and effective framework in place to ensure that passenger demand is met through improved capacity. In the interim, while capacity improvements are implemented, there exists a fair and market-based framework to allocate scarce New York access resources. It must recognize historic investment, protect U.S. jobs, allow the U.S. to meet its international obligations, and allow new entrants to the market without discriminating against U.S. carriers.

New York Airspace Congestion and Operational Limitations at JFK

Delta is committed to working with the Department of Transportation and the FAA to find a solution to the unacceptable congestion and delays at JFK. A recurrence of what our customers experienced last summer is unacceptable both for them and our operation. Near term fixes and long-term plans must be put in place quickly to avoid a repeat in 2008.

Even before DOT called for the scheduling reduction meeting, Delta was taking voluntary unilateral steps in an effort to address this problem. For example, Delta had already published significant changes to its JFK schedule for 2008, including:

- Smoothing of operations through the day by adding a third transatlantic bank in the off-peak hours using new, smaller narrow-body 757-200ER aircraft capable of international flying during off-peak periods;
- Focusing growth outside of existing peak congested periods;
- Smoothing arrival peaks by spreading arrivals throughout the day, while preserving convenient connections to Delta's international service; and

- Increasing average seats per departure by 10% through, among other things, upgauging of many domestic feed markets to larger gauge mainline aircraft, eliminating Dash-8 Turboprop service, and introducing new 76-seat regional jets in connecting markets previously served with smaller commuter aircraft.

In addition to these unilateral efforts implemented before FAA convened the scheduling reduction meeting, Delta made it clear to the DOT and to FAA that it is willing to make additional, difficult sacrifices as part of a voluntary industry-wide solution at JFK *if* the process as a whole is fair and non-discriminatory and respects the historic rights of those carriers, like Delta, which have invested hundreds of millions of dollars and thousands of jobs over the last several decades to build their current networks at JFK.

The FAA Targets Must Be Raised

The proposed targets FAA has recently set for JFK operations are too low. For the four decades between 1969 and 2006, JFK operated successfully under the High Density Rule (HDR), codified at 14 CFR part 93, subpart K. As the October 16 Notice acknowledges, the HDR limited aircraft operations at JFK only during the five hours of peak transatlantic demand: 3:00 pm through 7:59 pm local time. *See* 14 C.F.R. 93.133(b). Moreover, for more than two decades (since 1984), the level of operations permitted at JFK under the HDR during the period when caps applied was significantly *higher* than what the FAA now proposes. The HDR caps ranged from 6 to 15% higher in every affected hour except 7:00-7:59 p.m., as reflected in the following table:

Time Period	Air Carrier	Commuter	Other	TOTAL	% Higher Than Proposed New Caps
1500-1559	69	15	2	86	6%
1600-1659	74	12	2	88	9%
1700-1759	80	13	0	93	15%
1800-1859	75	10	2	87	7%
1900-1959	63	12	2	77	-5%

Source: 49 Fed. Reg. 8237, 8241 (1984), *codified at* 14 C.F.R. 93.123.

These significantly higher caps, which only applied during a limited peak period each afternoon, were sufficient to manage congestion at the airport for more than twenty years.

Effective January 1, 2007, the restrictions imposed by the HDR expired at JFK pursuant to 49 U.S.C. § 41715(a)(2). Now, less than one year after that expiration, the FAA proposes to cap JFK's operations at significantly *lower* levels than were adequate to serve the public interest for more than twenty years. There is no reason why air carriers and the public should suffer this restriction on service at the airport before the FAA implements all operational and procedural solutions identified by Delta and other stakeholders in the New York ARC. At a minimum, the targets should reflect the tested and proven historical baseline capacity at JFK as set forth in the HDR, and also the likely expansion of that baseline capacity that will result as the FAA implements the more than 75 near term capacity improvement projects identified by the Operational/Infrastructure Improvements working group of the NY ARC. The current targets take no account at all of the effect of this essential near term expansion of capacity at JFK.

These low operational targets for JFK will harm the public interest by severely and unnecessarily constraining the services that U.S. commercial air carriers are able to provide to the traveling public. FAA proposes to cap JFK operations at 80 per hour from 6:00am - 2:59 p.m. and 8:00 p.m. - 9:59 p.m., increasing to 81 from 3:00 p.m. - 7:59 p.m. This would reduce service levels by more than 20% from current published schedules during certain peak periods. As the Port Authority has observed, if this limitation had been in place at the airport last year, it would have resulted in the denial of service to nearly *3.4 million* passengers, or almost 10,000 per day.

But that statistic understates the harm to the public because it does not account for the damaging effects this capacity constraint would inflict on U.S. airline networks. Delta operates a major international gateway from JFK, currently offering U.S. flag service to 33 destinations around the world with published plans to expand to more than 50 international destinations in 2008. Delta offers service to points in India, Europe, Latin America, the Middle East, and Africa (most of which are unique destinations served by no other U.S. carrier). This major international gateway at JFK benefits not only the millions of passengers in the huge local New York market but also the millions more who enjoy convenient online one-stop service from dozens of small, medium and large communities throughout the United States via JFK to the world. Both Delta's international gateway at JFK and service to those communities are gravely threatened by the FAA's proposed caps at the airport.

The viability of Delta's international operation depends upon the traffic Delta collects throughout its domestic route network and connects via JFK to the world. Fifty percent of the passengers on typical Delta 767-300 transatlantic flights departing from JFK are connecting passengers, and, of those, roughly half are connecting from flights operated by Delta Connection

carriers flying regional jet service to the airport. If the FAA imposes artificially low caps that make it impossible for Delta and its Delta Connection partners to operate enough domestic flights to support this international service, the FAA will not only deny service to the small and medium-sized communities whose flights Delta will be forced to cancel, it will also undermine Delta's international service itself. In other words, the caps would harm New York and *all* U.S. communities that would otherwise benefit from these services. The restrictions would also impede the execution of a crucial component of Delta's business plan as we have emerged from bankruptcy, and they would threaten our continuing recovery.

Similarly, to the extent that DOT and the FAA place the burden of meeting these unreasonably low caps entirely on the backs of U.S. carriers, it will undermine the competitiveness of U.S. carriers relative to their foreign flag competitors.

Obviously, DOT and the FAA must minimize the extent to which they inflict this kind of harm on air carriers and the traveling public. In carrying out its regulatory functions, the FAA must, among other things:

> encourag[e] entry into air transportation markets by new and existing air carriers....
>
> promot[e], encourage[e], and develop [] civil aeronautics and a viable, privately-owned United States air transport industry
>
> strengthen[] the competitive position of air carriers to at least ensure equality with foreign air carriers, including the attainment of the opportunity for air carriers to maintain and increase their profitability in foreign air transportation
>
> ensur[e] that consumers in all regions of the United States, including those in small communities...have access to affordable, regularly scheduled air service

E.g., 49 U.S.C. § 40101(a)(13)-(16). The proposal to cap JFK at 80-81 operations per hour fails to meet these core air transportation statutory policy objectives because it caps JFK operations at unreasonably low levels.

Delta has urged FAA to revise the current targets upward to the maximum extent

possible. At a minimum, the limits imposed now at JFK should be no more restrictive than those which were imposed under the HDR rule that expired only ten months ago. Any caps imposed should also build in aggressive increases to be phased in on a specific timeline that holds FAA itself accountable for achieving the expected growth in capacity as it fulfills its responsibility to implement the near-term capacity improvements described above.

The Northeast Airspace Must Be Fixed

The DOT's overall proposed approach is also flawed because it ignores the fact that the congestion and delay concern at JFK is fundamentally a New York area airspace issue and not simply a problem caused by commercial air carrier schedules at JFK. There are fifteen commercial and non-commercial airports in the New York Terminal Radar Control area (TRACON), and commercial airline operations represent only 53% of the total operations. As reflected in the following chart, the three primary commercial airports in the New York region all operated significantly below both their FAA-published design capacity *and* the capacity rates "called" by the FAA each day based on factors like weather, turbulence, etc., for each airport, during the period from January – April 2007.

Airport	Design Capacity	Average FAA Call Rates	Average Actual Rates
JFK	100 ops/hr	84	68
LGA	81 ops /hr	75	65
EWK	94 ops /hr	74	67

Source: Federal Aviation Administration, Aviation System Performance Metrics.

In other words, these airports – and JFK and EWR in particular – are operating at far below their design capacity. The problem is not unique to JFK and it is not the result of a lack of runway space or over-scheduling. There is ample concrete for commercial airlines to operate their existing schedules. The problem is ineffective management of the complex New York area airspace.

Therefore, the only real solution is one that addresses the airspace issue. The Air Transport Association and the Port Authority have made the FAA aware of multiple short-term, realistic steps that can be taken immediately to dramatically increase New York area airspace throughput. These include appointment of a New York airspace "Czar" at the FAA who is empowered to coordinate the activities of the Air Traffic Organization in and around New York airspace - a measure taken in 2005 for South Florida that has been extremely successfully. Delta's South Florida delay rate came down by 40% and taxi-out delays over 90 minutes were reduced by 69%. Others include using 3, if not all 4 of the available runways at JFK, rather than continuing the current practice which only permits use of two; staffing to meet peak demand periods at ATC facilities; providing ATC staff with incentives to meet both realistic capacity <u>and</u> safety targets; immediate deployment of area navigation (RNAV) with phased required navigational performance (RNP) requirements – in other words, precise, satellite-based approach and departure patterns at the New York region's three main commercial airports; and acceleration of the Northeast Airspace Redesign, among others.

Despite the fact that this is a New York airspace issue, and not just a JFK scheduling issue, the DOT's proposed solution would allocate the entire burden of resolving it on the backs

of U.S. commercial air carriers who have invested hundreds of millions of dollars over the years to build significant scheduled operations at JFK. The FAA in its schedule reduction conference meetings seeks cuts only from U.S. commercial air carriers, and only at JFK. The FAA has not yet sought reductions at Newark (which currently operates without slot restrictions of any kind), nor has it proposed any restriction on general aviation from nearby Teterboro, Morristown, Westchester airports or otherwise.

The most alarming aspect of the DOT/FAA process is that it seeks no cuts from foreign flag carriers. This attempt to lay the entire burden of the New York airspace problem on the backs of U.S. commercial air carriers serving JFK is unfair and discriminatory. Worst of all, it is doomed to failure, since it will simply shift the demand for airspace from JFK to other New York area airports. Capacity caps at JFK alone will have little or no impact on the real problem.

The DOT Cannot Discriminate Against U.S. Flag Carriers

The DOT's proposed solution for JFK is also fundamentally flawed because it asks U.S. carriers voluntarily to accept a system of blatant discrimination, in which the historic rights of foreign flag carriers are protected without exception and those of U.S. carriers are ignored.

Any Solution Must Recognize JFK's Unique International Role

The DOT cannot ignore the uniquely international character of the New York gateway in general, and JFK in particular. New York is the largest and most important international destination in the United States by far. One in five international passengers travels to or from New York. The New York market is twice as large as Los Angeles, and three times the size of Miami – the next closest alternatives.

JFK alone represents one of the most important international gateways in the country for

both U.S. and foreign flag carriers. As discussed above, Delta has established a major U.S. flag international gateway at JFK. American Airlines and JetBlue also operate significant international services from this airport. More than 60 foreign flag carriers offer service at JFK. In the August 2007 schedules, international services represented almost one-third of the total scheduled operations at the airport, and foreign flag carriers were responsible for more than half of that service.

DOT's Approach Discriminates Against U.S. Carriers By Grandfathering All Foreign Carrier Services And Seeking Cuts Exclusively From U.S. Carriers

Despite the unique international character of JFK and the heavy presence of foreign air carriers at the airport, the FAA has only sought reductions from U.S. carriers, and it has already granted historic status for the operations of foreign flag air carriers based on their summer 2007 flights if requested for summer 2008. In other words, the same notice that declared JFK a Level 3 coordinated airport under the IATA WSG also made clear that FAA will reject the core principles of fairness and non-discrimination underlying those IATA guidelines. Incredibly, the FAA will respect the historic rights of foreign carriers, consistent with the IATA WSG principle that such historic rights are the core of the slot allocation process. However, DOT will deny those same historic rights to U.S. carriers.

DOT and FAA's excuse for this incomprehensible discrimination against U.S. flag carriers is the language of 49 U.S.C. § 41722, which allows the Secretary to convene a scheduling conference with "air carriers" for the purpose of seeking schedule reductions at congested airports when the Secretary and Administrator determine that it is necessary to do so. While it is true that the authority this statute grants is limited to meetings with "air carriers," *i.e.*, U.S. flag carriers, this means only that foreign flag carriers are not explicitly included within the scope of this particular statute. Nothing in 49 U.S.C. § 41722 *prohibits* FAA from also

requesting "voluntary" reductions from foreign flag carriers if necessary to implement initially a slot system at an airport the FAA has determined must be redesignated as Level 3 and coordinated pursuant to the IATA WSG. To the contrary, seeking such voluntary concessions is precisely what is expected of the Schedules Facilitator under the IATA guidelines at a *Level 2* airport – one in which congestion levels make it necessary to seek "voluntary cooperation" from the airlines in adjusting schedules to deal with congestion concerns short of the imposition of caps on operations.

Obviously, this general authority to issue orders or regulations that are necessary to ensure the safety of aircraft and the efficient use of the airspace would apply with equal affect to the operations of domestic and foreign air carriers. There is no legal basis for suggesting that FAA could force U.S. carriers to reduce their operations at JFK pursuant to this general power, but that it could not impose the same burdens or restrictions on foreign flag carriers. In fact, DOT *cannot* impose any restrictions on U.S. flag carriers that disadvantage them relative to their foreign competitors. To the contrary, the Secretary must to seek to "strengthen[] the competitive position of [U.S.]air carriers *to at least ensure equality with foreign air carriers*, including the attainment of the opportunity for air carriers to maintain and increase their profitability in foreign air transportation" when carrying out its regulatory functions.

The Federal Aviation Act expressly *prohibits* FAA from withdrawing a slot (under the old High Density Rule) from a U.S. carrier and reallocating it to a foreign carrier if U.S. air carriers are not provided similar preferential treatment in the foreign air carrier's country. In other words, Congress has made crystal clear its intent that DOT must *not* do precisely what it is proposing to do here – discriminate against U.S. flag carriers by giving foreign carriers preferential treatment in slot systems at U.S. airports when U.S. carriers are denied those same

preferential treatments at airports abroad.

The bottom line is that DOT and FAA's orders and regulations must "at least ensure [U.S. air carriers'] equality with foreign flag carriers" – and certainly that DOT must not engage in blatant discrimination against U.S. carriers. U.S. flag carriers are routinely locked out of highly-congested airports in Europe (such as London Heathrow) and elsewhere abroad, unless they are able to purchase or otherwise acquire slots at those airports in the secondary market or through other slot usage agreements. Yet DOT's proposed treatment of foreign carriers at JFK would reward them with unfair and preferential treatment by exempting them from any share in the pain of addressing congestion at the New York gateway.

DOT's Approach Will Undermine The Ability of U.S. Carriers to Compete With Foreign Flag Carriers From This Gateway

By forcing U.S. carriers to shrink their domestic operations at JFK, DOT will undermine the ability of U.S. carriers to compete with foreign flag carriers in the transatlantic long-haul markets. Thousands of jobs could be lost if Delta were forced to dramatically reduce its JFK schedules and abandon its efforts to compete with foreign carriers in those markets.

Delta's transatlantic operations from JFK depend upon the critical domestic traffic which Delta collects throughout the United States and connects over JFK to the world. That is service FAA now proposes to suppress with its discriminatory caps at the airport. In contrast, the foreign flag carriers with whom Delta competes in the transatlantic markets support their international service primarily with domestic feed they collect in Europe or otherwise beyond their European hubs.

These foreign carriers face no similar discrimination against regional and domestic service at international airports feeding their transatlantic services to JFK. The slot systems in place at congested airports in Europe do not pick and choose among the fundamental principles

underlying the IATA WSG. While there may be minor local variations, slot systems at European hubs and at other foreign airports around the world uniformly protect historic rights of all carriers serving the airport. They do not discriminate between domestic and international service, or between large and small aircraft.

For example, the EU Slot Regulation requires that slots be allocated in "a neutral, non-discriminatory and transparent way," tracking directly the fundamental principle underlying the IATA guidelines. The primary slot allocation principle, again consistent with the IATA WSG, is the protection of the historic rights of all carriers serving the airport without discrimination against domestic service. There is no provision in the regulation creating a preference in favor of foreign (*i.e.*, U.S.) flag carriers. To the contrary, the regulation permits a special preference under narrow circumstances for certain *domestic* scheduled services.

In other words, if U.S. carriers want access to congested foreign airports, even under the most liberalized bilateral aviation services agreements, they must first obtain slots. For example, despite the broad air service rights granted to all U.S. carriers under the historic new U.S. – E.U. Open Skies Agreement, Delta was only able to obtain access to London Heathrow airport after it acquired the right to use London Heathrow slots through its recently-announced joint venture agreement with its European alliance partner Air France. Similarly, Continental announced in its most recent Form 10-Q filing with the Securities and Exchange Commission that it had committed to pay *$130 million* for an unspecified number of London Heathrow slots.

There is no reason to apply any different standard to foreign carriers who want to operate to congested airports in the United States. U.S. flag carriers deserve a level playing field. It is DOT and FAA's legal duty to give them one. DOT or FAA regulations or orders that suppress the domestic networks of U.S. flag carriers operating at JFK, while foreign flag carriers suffer no

similar restrictions on domestic service feeding their foreign hubs, will directly undermine the ability of U.S. flag carriers to compete with the foreign carriers from the New York gateway. Granting foreign flag carriers privileged access to congested airports in the United States while U.S. flag carriers receive no similar special treatment abroad will have the same result. These perverse outcomes violate the specific Congressional directives. DOT must seek to "strengthen[] the competitive position of air carriers *to at least ensure equality with foreign air carriers*," and cannot reallocate slots from U.S. to foreign carriers unless U.S. carriers receive the same privileges abroad.

The FAA should request voluntary reductions on the part of *all* carriers serving the airport, not just the U.S. flag carriers. There is no basis in law or policy for excluding foreign carriers from this process. At a minimum, all carriers should be asked to contribute in direct proportion to their current service levels at the airport.

Dot Should Guarantee Carriers Who Reduce Service Voluntarily That Their Historic Service Rights Will Be Restored Before New Capacity Is Made Available To Other Carriers

Assuming that (1) caps are actually necessary, (2) the proposed targets are reset upwards to an appropriate level, (3) appropriate steps are taken at all New York area airports rather than only at JFK, and (4) all carriers serving JFK are asked to share at least proportionally in the pain necessary to implement the caps, then the FAA must still ensure that the historic operating rights of all carriers are given equal protection to the greatest extent possible. To successfully achieve "voluntary" reductions, DOT must reassure all carriers who agree to make sacrifices that their historic rights will be given the same respect as their competitors who do not agree to make such sacrifices. In particular, DOT cannot expect U.S. carriers to volunteer significant cuts in their planned operations without binding assurances that that the capacity freed up by those painful

cuts will not simply be turned over to their competitors – foreign or domestic – now or at any point in the future. No capacity should be made available for new scheduled services until *all* services that incumbent carriers agreed to cancel as a part of this scheduling conference has been restored.

Going Forward, All Carriers Must Receive Non-Discriminatory Treatment Under The Globally-Accepted Market-Oriented IATA Worldwide Scheduling Guidelines

Finally, once the initial implementation of a Level 3 slot coordination system at JFK is completed, it should be administered in a neutral, non-discriminatory and transparent way, consistent with the IATA guidelines. In short, FAA should implement the IATA WSG in its entirety at JFK.

There are compelling reasons to adopt the IATA WSG for slot coordination at JFK. The most compelling is that it is tested and it will work. The IATA system has been refined over the course of sixty years, and is proven effective for addressing congestion at more than one hundred of the most congested airports in the world. It is dynamic and flexible, allowing for rapid adjustment to changing circumstances as airport capacity changes. It is fair and non-discriminatory. The rights of all carriers are treated with equal protection, pursuant to transparent and neutral rules.

Significantly, adoption of the IATA WSG as the basis for slot coordination at JFK is particularly appropriate given the unique international character of that airport. It is a globally-accepted system, familiar and acceptable to foreign carriers and foreign governments alike. There is no question that a transparent, neutral and non-discriminatory application of the IATA WSG to both foreign and domestic operations at JFK would be fully consistent with U.S.

obligations under the U.S. aviation services agreements with foreign governments.[1]

However, the IATA guidelines would achieve these important foreign policy objectives *without* unduly burdening domestic operations or undermining the ability of U.S. flag carriers to compete for long-haul service to and from this key international gateway. The IATA guidelines treat all operations in a fair and non-discriminatory manner. All historic rights are respected equally, whether those rights are used to operate transatlantic long-haul service, domestic mainline service, or regional jet commuter service to small and medium hub airports. The IATA guidelines establish the ground rules that are applied at congested foreign airports abroad (often to the detriment of U.S. carriers who would like to add service to those airports). Thus, application of these guidelines at JFK would create a level playing field, without giving any unfair advantage to foreign flag carriers or forcing unfair burdens on carriers who offer primarily domestic service from the airport.

This is in sharp contrast to the approach FAA adopted last year for congestion management at Chicago's O'Hare Airport (ORD). The ORD rules create a special class of "Arrival Authorizations" that can be used only for international service. The rules guarantee arrival authorizations within one hour of the requested time to any carrier that proposes to offer international services (other than U.S.-Canada transborder service) the airport. No similar guarantees are made to carriers seeking to add additional domestic service to the airport.

If applied at JFK, the ORD rules would discriminate against U.S. carriers and undermine their ability to compete with foreign carriers for all the reasons described above. As noted

---

[1] The IATA guidelines note that "[s]lot allocation is independent of bilateral air service agreements. The granting of landing rights does not entitle an airline to airport slots, nor does the allocation of slots to an airline entitle that airline to landing rights." IATA WSG § 5.8 at p. 14. As noted in Section 0 above, foreign governments routinely apply the same principles to U.S. carriers who would prefer to but cannot serve highly congested foreign airports without first obtaining slots.

above, nearly one-third of the flights operated to/from JFK are international flights. More than half of those are operated by foreign flag carriers. The most congested periods at the airport are the morning and afternoon banks during which virtually all of the viable transatlantic long-haul service must take-off and land. If any carrier that wanted to add new international service to JFK could do so with impunity during these peak congested periods, then any slot system restraining domestic service would inevitably fail as a congestion management tool. New international service would simply back-fill any reductions extracted from U.S. carriers out of their domestic networks. The congestion would remain or worsen at the critical peak periods, and the constraint on the domestic networks of U.S. carriers would make it impossible for them to compete effectively with their foreign competitors that face no similar discrimination at their own hubs abroad. This result would be unlawful for the reasons discussed above. It would also make no sense as a matter of U.S. aviation policy.

The IATA WSG are also entirely consistent with the only tested and workable market-based system for allocation of scarce airport resources that is within the legal authority of the FAA to implement under current law: a secondary market in slots created through an effective buy/sell mechanism. In contrast to the untested experiments in "congestion pricing" that are being discussed in the NY ARC, the buy/sell rule has been functioning effectively in the United States for more than two decades. As evidenced by the recent access to Heathrow obtained by Delta and Continental discussed above, the secondary slot market provides a viable means for new entrants to gain access to even the most congested airports in the world, if they are willing to pay a market price for slots.

In short, the IATA guidelines are time-tested and fair. They offer a nondiscriminatory and globally accepted solution to congestion management that can be used to allocate scarce

airport capacity with a market-based allocation mechanism. However, they cannot be implemented piecemeal. The IATA guidelines provide a globally-accepted set of principles for slot coordination at congested airports, but those principles – neutrality, transparency and non-discrimination – are meaningless if the FAA applies them only for the benefit of foreign flag carriers, or only to international air transportation.

The FAA has already designated JFK as a Level 3 coordinated airport, recognizing the global acceptance of the IATA WSG as a congestion management tool for the world's most congested airports. If this voluntary scheduling conference is to succeed, however, the DOT must follow through and implement IATA WSG *in its entirety* at JFK. Without a clear and binding assurance that they will be treated in a fair and non-discriminatory manner in this process, U.S. carriers like Delta who have invested hundreds of millions of dollars and hired thousands of employees over the last several decades to build their current service levels at JFK will simply not be willing to make the voluntary reductions that FAA seeks.

Delta remains committed to partnering with DOT and FAA in finding a solution for the congestion and delays in the New York area, including JFK. However, for those efforts to be successful, DOT and FAA must modify the approach they have undertaken. FAA should raise the proposed targets for JFK to reasonable levels, and at least to the levels that were applied under the HDR. It should expand the process to other New York area airports, so that all stakeholders in the NY airspace issue can share in the solution. DOT and FAA should eliminate their blatant discrimination in favor of foreign flag carriers. They should guarantee restoration of historic service rights for all carriers that agree to contribute to the solution. And they should implement the IATA WSG as a neutral, transparent, non-discriminatory and globally-accepted slot coordination system at this key U.S. international gateway.

Mr. Chairman, that concludes my statement. On behalf of all Delta employees worldwide, I wish to thank you again for the opportunity to appear before this subcommittee and will gladly answer any questions you or your colleagues may have.